

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MORANA, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,
v.

PARK HOTELS & RESORTS, INC. d/b/a
HILTON WORLDWIDE HOLDINGS, INC.,
HLT NY WALDORF LLC, HILTON
DOMESTIC OPERATING CO. INC., and
WALDORF-ASTORIA MANAGEMENT LLC

Defendants.

Case No. 1:20-cv-02797-RA

**DECLARATION OF WILLIAM M.
HOGG IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR RULE 11 SANCTIONS**

I, William M. Hogg, declare:

1. I am an attorney at law duly licensed and in good standing to practice law in the courts of Texas (State Bar No. 24087733) and am admitted to practice law before this Court *pro hac vice*. I am an associate attorney at the law firm of Schneider Wallace Cottrell Konecky LLP, counsel for Plaintiff Michael Morana, individually and on behalf all others similarly situated, ("Plaintiff") in this action.

2. I have personal knowledge of the facts set forth in this Declaration and, if called upon as a witness, I could and would testify competently as to these facts.

3. In preparing and filing the Second Amended Complaint, Plaintiff's counsel inadvertently omitted factual allegations regarding Plaintiff's union member status and to what extent, if any, that a Collective Bargaining Agreement applied to Plaintiff' claims. While such factual allegations would not be necessary for Plaintiff to prove the elements of his claims, Plaintiff's omission was not purposeful or willful, but was simply a mistaken oversight.

4. On May 4, 2021, counsel for Defendants sent email correspondence to me, as well as the other counsel of record for Plaintiff in this matter. That email correspondence contained a PDF attachment, consisting of a letter requesting that Plaintiff withdraw his Second Amended

Complaint in its entirety, or else Defendants would move for Rule 11 sanctions and attaching a “Notice of Motion for Sanctions,” consisting of three pages that Defendants contend to provide proper 21-day “safe harbor” notice of their intention to bring a motion for sanctions under Rule 11 of the Federal Rules of Civil Procedure.

5. In that letter and the accompanying “Notice of Motion,” Defendants alleged the Second Amended Complaint failed to address 1) whether Plaintiff is or has been a member of the New York Hotel and Motel Trades Counsel, AFL-CIO; 2) whether and to what extent any collective bargaining agreement governed the terms of Plaintiff’s employment at the Waldorf Astoria during the proposed class period; and 3) whether and to what extent Plaintiff’s employment at the Waldorf Astoria was subject to other written terms or conditions.

6. Approximately two weeks later, on May 20, 2021, I sent correspondence to Defense counsel letting them know we had had opportunity to review and consider the letter and wanted to meet and confer, in an effort to avoid unnecessary motion practice. A true and correct copy of that email correspondence is attached as **Exhibit 1**. We thereafter scheduled a call for Monday, May 24, 2021 to discuss the letter. *Id.*

7. During that meet and confer effort, the parties disagreed over the substance of Defendants’ threatened motion for sanctions. While discussing Plaintiff’s inadvertent omission of facts regarding his status as a union member and the CBA, I specifically informed Defense counsel that such an omission was not willful, was an inadvertent oversight, and offered to cure that perceived deficiency if Defendants would consent in writing to allow the amendment pursuant to Rule 15. *Id.* As I explained, the proposed amendment would include the information about union status and the CBA, but would not add any new parties, causes of action, or other alterations from the SAC. Instead, the amendment would simply narrow the issues that remained in dispute and

avoid unnecessary motion practice over a very straightforward issue of a perceived pleading deficiency.

8. Despite these representations and the ability to avoid unnecessary motion practice, Defense counsel (primarily Joseph Piesco) refused to agree or consent to the proposed amendment, and insisted upon pressing forward with the motion for sanctions. Instead, Mr. Piesco flatly demanded that Plaintiff withdraw his lawsuit in its entirety, and would not consider any alternative amendments or proposals from Plaintiff's counsel that might avoid motion practice. Following the meet and confer by phone, I sent email correspondence confirming my understanding of Defendants' positions. *Id.* Defendants did not respond to this email correspondence. Defendants filed their Motion for Sanctions on June 4, 2021.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and is based upon my own personal knowledge.

Executed in Cincinnati, Ohio on June 11, 2021.

/s/ William M. Hogg
WILLIAM M. HOGG

EXHIBIT 1

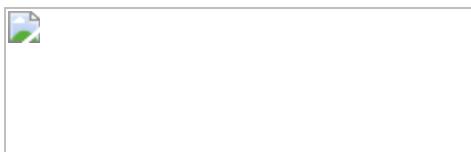
From: William M. Hogg
Sent: Monday, May 24, 2021 2:22 PM
To: Piesco, Joseph; Lewandoski, Alison
Cc: Carolyn H. Cottrell; John J. Nestico; Ori Edelstein; Kristabel Sandoval; Kennedy, Garrett
Subject: RE: Morana v. Park Hotels & Resorts Inc. et al

Categories: Blue Category

Counsel,

Thank you for speaking with us today. Based on our phone call, it is my understanding that Defendants have confirmed they are unwilling to permit any further amendment of the lawsuit to cure any of Defendants' perceived pleading deficiencies. We understand your positions, will discuss internally about next steps, and get back to you in the next few days.

Thank you,



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From: Piesco, Joseph <joseph.piesco@dlapiper.com>
Sent: Thursday, May 20, 2021 5:14 PM
To: William M. Hogg <whogg@schneiderwallace.com>; Lewandoski, Alison <alison.lewandoski@dlapiper.com>
Cc: Carolyn H. Cottrell <ccottrell@schneiderwallace.com>; John J. Nestico <jnestico@schneiderwallace.com>; Ori Edelstein <oedelstein@schneiderwallace.com>; Kristabel Sandoval <ksandoval@schneiderwallace.com>; Kennedy, Garrett <garrett.kennedy@dlapiper.com>
Subject: Re: Morana v. Park Hotels & Resorts Inc. et al

Ok

From: William M. Hogg <whogg@schneiderwallace.com>
Sent: Thursday, May 20, 2021 5:57:21 PM
To: Piesco, Joseph <Joseph.Piesco@us.dlapiper.com>; Lewandoski, Alison <alison.lewandoski@us.dlapiper.com>

Cc: Carolyn H. Cottrell <ccottrell@schneiderwallace.com>; John J. Nestico <jnestico@schneiderwallace.com>; Ori Edelstein <oedelstein@schneiderwallace.com>; Kristabel Sandoval <ksandoval@schneiderwallace.com>; Kennedy, Garrett <garrett.kennedy@us.dlapiper.com>
Subject: RE: Morana v. Park Hotels & Resorts Inc. et al

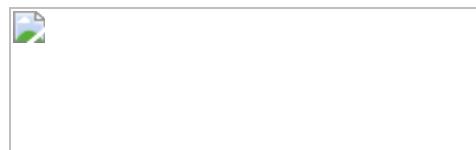
[EXTERNAL]

How about 4:00 pm EST?

Dial-in information:

United States (Toll Free): 1 866 899 4679
United States: +1 (571) 317-3116
Access Code: 822-216-949

Thanks,



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From: Piesco, Joseph <joseph.piesco@dlapiper.com>
Sent: Thursday, May 20, 2021 3:50 PM
To: William M. Hogg <whogg@schneiderwallace.com>; Lewandoski, Alison <alison.lewandoski@dlapiper.com>
Cc: Carolyn H. Cottrell <ccottrell@schneiderwallace.com>; John J. Nestico <jnestico@schneiderwallace.com>; Ori Edelstein <oedelstein@schneiderwallace.com>; Kristabel Sandoval <ksandoval@schneiderwallace.com>; Kennedy, Garrett <garrett.kennedy@us.dlapiper.com>
Subject: Re: Morana v. Park Hotels & Resorts Inc. et al

Sure.

From: William M. Hogg <whogg@schneiderwallace.com>
Sent: Thursday, May 20, 2021 4:44:49 PM
To: Lewandoski, Alison <alison.lewandoski@us.dlapiper.com>
Cc: Carolyn H. Cottrell <ccottrell@schneiderwallace.com>; John J. Nestico <jnestico@schneiderwallace.com>; Ori Edelstein <oedelstein@schneiderwallace.com>; Kristabel Sandoval <ksandoval@schneiderwallace.com>; Piesco, Joseph <Joseph.Piesco@us.dlapiper.com>;

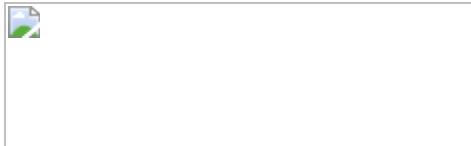
Kennedy, Garrett <garrett.kennedy@us.dlapiper.com>
Subject: RE: Morana v. Park Hotels & Resorts Inc. et al

[EXTERNAL]

Counsel,

We have reviewed and considered your letter. Do you have time for a call on Monday afternoon to discuss?

Thanks,



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From: Lewandoski, Alison <alison.lewandoski@dlapiper.com>
Sent: Tuesday, May 4, 2021 5:19 PM
To: William M. Hogg <whogg@schneiderwallace.com>
Cc: Carolyn H. Cottrell <ccottrell@schneiderwallace.com>; John J. Nestico <jnestico@schneiderwallace.com>; David C. Leimbach <DLeimbach@schneiderwallace.com>; Ori Edelstein <oedelstein@schneiderwallace.com>; Kristabel Sandoval <ksandoval@schneiderwallace.com>; Piesco, Joseph <joseph.piesco@dlapiper.com>; Kennedy, Garrett <garrett.kennedy@dlapiper.com>
Subject: Morana v. Park Hotels & Resorts Inc. et al

Counsel,

Please see attached.

Thank you and best regards,
Alison

Alison M. Lewandoski
Associate

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F +1 917 778 8695
M +1 973 800 9559
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